

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MITCHELL HUNGERPILLER
AND PATRICIA HUNGERPILLER,
individually and on behalf of a class of
similarly situated persons,

PLAINTIFFS,

V.

RC2 CORPORATION AND
LEARNING CURVE BRANDS, INC.,

DEFENDANTS.

CIVIL ACTION NO.: CV-07-1805-S

DEFENDANTS' MOTION FOR STAY OF PROCEEDINGS

Defendants RC2 Corporation and Learning Curve Brands, Inc. d/b/a RC2 Brands, Inc. (collectively "Defendants") move the Court to stay proceedings pending the ruling of the Judicial Panel on Multidistrict Litigation ("JPML") on the pending Motions to Transfer filed in MDL No. 1893 – In Re: RC2 Corp. Toy Lead Paint Products Liability Litigation. In support of this motion, Defendants show as follows:

1. Currently there are at least seventeen (17) federal actions filed in nine (9) different U.S. District Courts across the country asserted against the Defendants and relating to the subject of this cause of action. In these actions, putative class members and individuals assert claims in connection with their purchase of Thomas & Friends™ Wooden Railway Toys, which were the subject of a recall. These numerous lawsuits contain common questions of fact relating to these products.

2. At this time, there are two motions to transfer this action and the other related actions to a single judicial district, pursuant to 28 U.S.C. § 1407, pending before the JPML. Defendants filed a Motion for Transfer of Actions to the Northern District of Illinois for

Coordinated Pre-trial Proceedings, pursuant to 28 U.S.C. § 1407, with the JPML on August 27, 2007 requesting transfer of all related cases for consolidation in the Northern District of Illinois.¹ A second Motion for Transfer and Coordination, pursuant to 28 U.S.C. § 1407, was filed by Plaintiff in the case of Martinez v. RC2 Corporation, pending in the United States District Court in the Central District of California. The JPML has placed both of these motions to transfer in the same case, MDL No. 1893, In Re: RC2 Corp. Toy Lead Paint Products Liability Litigation.

3. Further, on August 24, 2007, plaintiffs in eleven (11) of the actions pending in several district courts filed a joint motion for transfer, which also requested that all such actions be consolidated in the Northern District of Illinois. This Motion for Transfer has been filed by the JPML as a response to the pending Motions for Transfer described above.

4. The hearing on these motions to transfer is set to proceed on November 29, 2007.

5. Defendants filed its Motion to Transfer because the numerous lawsuits that have already been filed contain common questions of fact and coordination would serve the convenience of the parties and witnesses and would promote the just and efficient conduct of the litigation.

6. Given the pendency of the transfer motions before the JPML, a stay of the proceedings in this action is appropriate.

7. Thus far, four federal courts have entered stay orders in these class actions pending a decision on the JPML: The U.S. District Court for the Southern District of Indiana; The U.S. District Court for Southern District of Florida; the U.S. District Court for the Eastern

¹ A schedule of the cases for which transfer is sought is attached as "Exhibit A".

District of Arkansas; and the United States District Court for the Eastern District of New York²

The U.S. District Court for New Jersey is the lone court that denied the motion to stay.

8. Although this Court is not required to stay proceedings pending actions by the JPML, it has the discretion do so. See Rule 1.5, Rules of Procedure of the Judicial Panel on Multidistrict Litigation. In fact, it is common practice for courts in this district to stay an action pending a transfer decision by the JPML. e.g., Gordon v. Pfizer, Inc., No. CV-06-RRA-703-E, 2006 WL 2337002 (N.D. Ala. May 22, 2006) (adopting the Magistrate's recommendation that the case should be stayed pending transfer to the JPML proceeding) (slip op.); see also Manual for Complex Litigation § 22.35 (4th ed. 2004) (noting that courts commonly stay such actions because "[a] stay pending the [JPML]'s decision can increase efficiency and consistency, particularly when the transferor court believes that a transfer order is likely and when the pending motions raise issues likely to be raised in other cases as well.").

9. As set forth more fully in Defendants' Memorandum in Support of Motion to Stay, a stay of the proceedings pending the JPML's ruling will not prejudice the parties and will preserve resources of the Court and parties by preventing any discovery or pleadings from occurring that may be duplicative or inconsistent with coordinated pretrial proceedings should the JPML grant Defendants' Motion for Transfer.

10. Defendants will notify the Court of the JPML's ruling on the pending Motions for Transfer in MDL No. 1893 as soon as its decision is known.³

² In the Eastern District of New York case, the stay was stipulated to by the parties. True and correct copies of these stay orders are attached as Exhibits B-E, respectively.

³ Defendants recently informed the JPML of this and another "tag-along" action. A true and correct copy of this Notice is attached as "Exhibit F".

WHEREFORE, Defendants RC2 Corporation and Learning Curve Brands, Inc., d/b/a RC2 Brands, Inc. respectfully request that the Court stay the proceedings in this action.

s/ Sean W. Shirley

One of the Attorneys for Defendants
RC2 Corporation and Learning Curve Brands, Inc.

OF COUNSEL:

Teresa G. Minor
Sean W. Shirley
Balch & Bingham LLP
Post Office Box 306
Birmingham, AL 35201-0306
Telephone: (205) 251-8100
Facsimile: (205) 226-8798

CERTIFICATE OF SERVICE

I hereby certify that I have on this 29th day of October, 2007, served the foregoing upon counsel of record via the Court's on-line filing system:

W. Lewis Garrison
Gayle L. Douglas
2224 First Avenue North
Birmingham, Alabama 35203

s/ Sean W. Shirley

Of Counsel

EXHIBIT A

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

MDL NO.-1893 --

IN RE RC2 CORP. TOY LEAD PAINT PRODUCTS LIABILITY LITIGATION

SCHEDULE OF ACTIONS

Case Caption	Court	Civil Action No.	Judge
Plaintiffs: James Weldon Stratton and Christina Marie Stratton, individually and as parents, natural guardians and next friends of E.J.S. and M.M.S., minors, on behalf of themselves and all others similarly situated Defendants: RC2 Corporation, Racing Champions ERTL Corporation, and Learning Curve Brands, Inc., formerly doing business as The ERTL Company, Inc., Racing Champions ERTL, Inc., RC ERTL, Inc., and RC2 Brands, Inc.	E.D. Arkansas	4:07-cv-640	James M. Moody
Plaintiffs: Abel Martinez, individually and on behalf of all others similarly situated Defendants: RC2 Corporation, and Does 1 through 10, Inclusive	C.D. California	2:07-cv-5401	A. Howard Matz
Plaintiffs: Brenda Maya Singer Defendants: Learning Curve Brands, Inc., and Learning Curve Brands, Inc., d/b/a, RC2 Brands, Inc.	S.D. Florida	1:07-cv-22274	Ursula Ungaro
Plaintiffs: Channing Hesse, individually and for all others similarly situated Defendants: Learning Curve Brands, Inc., and Learning Curve Brands, Inc., d/b/a, RC2 Brands, Inc.	N.D. Illinois	1:07-cv-3514	Harry D. Leinenweber
Plaintiffs: Jennifer Foshee Deke as mother and next friend of Parker Hayden Deke and Connor William Deke, on behalf of herself and others similarly situated Defendants: RC2 Corporation, and Learning Curve Brands, Inc., and Learning Curve Brands, Inc. d/b/a RC2 Brands	N.D. Illinois	1:07-cv-3609	Harry D. Leinenweber

Plaintiffs: Kim Walton, on behalf of herself and all those similarly situated Defendants: RC2 Corporation, and Learning Curve Brands, Inc., formerly doing business as RC2 Brands, Inc.	N.D Illinois	1:07-cv-3614	Harry D. Leinenweber
Plaintiffs: John O'Leary and Christine Waller, individually and for all others similarly situated Defendants: Learning Curve Brands, Inc., and Learning Curve Brands, Inc., d/b/a, RC2 Brands, Inc.	N.D Illinois	1:07-cv-3682	Harry D. Leinenweber
Plaintiffs: Paul Djurisc, as father and next friend of L.D. and N.D., his minor sons, on behalf of themselves and all others similarly situated, Defendants: Apax Partners, Inc., Hit Entertainment, RC2 Corporation, f/k/a, RC2 Brands and Learning Curve Brands, Inc.	N.D Illinois	1:07-cv-3707	Harry D. Leinenweber
Plaintiffs: Theresa Reddell and Rebekah Lockhart, individually and for all others similarly situated Defendants: Learning Curve Brands, Inc., and Learning Curve Brands, Inc., d/b/a, RC2 Brands, Inc.	N.D Illinois	1:07-cv-3747	Harry D. Leinenweber
Plaintiffs: Robyn Rohde, individually, and as parent, guardian and next of friend of Nicholas Rohde, a minor and Austin Rohde, a minor, and Tom Brady, individually, and as parent, guardian and next of friend of Christopher Brady, a minor, and on behalf of all others similarly situated. Defendants: Learning Curve Brands, Inc., f/ka RC2 Brands, Inc., RC2 Corporation, and Learning Curve International, Inc.	N.D. Illinois	1:07-cv-4187	Harry D. Leinenweber
Plaintiffs: Ryan Kreiner and Claudine M. Kreiner,	N.D. Illinois	1:07-cv-4547	George W. Lindberg

<p>individually and b/n/f of G.H.K., B.D.K., and C.J.K., minors, and Patrick Hudspeth and Caryn Hudspeth, individually and b/n/f of T.H.H. and A.L.H., minors, on behalf of themselves and all others similarly situated</p> <p>Defendants: RC2 Corporation, Racing Champions ERTL Corporation, and Learning Curve Brands, Inc., formally doing business as The ERTL Company, Inc., Racing Champions ERTL, Inc., RC ERTL, Inc. and RC2 Brands, Inc.</p>			
<p>Plaintiffs: Cherise Wilson, Aive Rei-Ghafoor, Tonya Tubbs, Thomas Toms, Tracy Hofmann, Sheree Argiris, and Cheng Yin, individually and for all others similarly situated</p> <p>Defendants: RC2 Corporation, and Learning Curve Brands, Inc., formerly doing business as RC2 Brands, Inc.</p>	N.D Illinois	1:07-cv-4642	Mark R. Filip
<p>Plaintiffs: Robert Miller, Rachel Miller, individually and b/n/f of J.R.M. and L.S.M., minors, Gregg Theobald and Shay Theobald, individually and b/n/f of N.P.T., a minor, and Chad J. Sweeney, on behalf of themselves and all others similarly situated</p> <p>Defendants: RC2 Corporation, Racing Champions ERTL Corporation, and Learning Curve Brands, Inc., formerly doing business as The ERTL Company, Inc., Racing Champions ERTL, Inc., RC ERTL, Inc., and RC2 Brands, Inc.</p>	S.D Indiana	1:07-cv-772	Larry J. McKinney
<p>Plaintiffs: David Murdock, individually and as father and next friend of Beau Farish Murdock and Anabelle Sage Murdock, minor children, on behalf of all others similarly situated</p> <p>Defendants: RC2 Corporation, Learning Curve Brands, Inc., Learning Curve Brands, Inc. d/b/a RC2 Brands, Inc., Wal-Mart Stores, Inc. and Toys "R" Us, Inc.</p>	D. New Jersey	2:07-cv-03376	William H. Walls
Plaintiffs:	E.D New York	1:07-cv-2525	Frederic

C. Kelly, on behalf of herself and all others similarly situated Defendant: RC2 Corporation			Block
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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ROBERT MILLER and)	
RACHEL MILLER, individually and)	Cause No. 1:07-cv-0772-LJM-WTL
b/n/f of J.R.M. and L.S.M., minors,)	
GREGG THEOBALD and)	
SHAY THEOBALD, individually and)	
b/n/f of N.P.T., a minor and)	
CHAD J. SWEENEY, on Behalf of)	
Themselves and All Others)	
Similarly Situated,)	
Plaintiffs,)	
)	
v.)	
)	
RC2 CORPORATION, RACING)	
CHAMPIONS ERTL CORPORATION,)	
and LEARNING CURVE BRANDS, INC.,)	
formerly doing business as)	
THE ERTL COMPANY, INC., RACING)	
CHAMPIONS ERTL, INC., RC ERTL,)	
INC. and RC2 BRANDS, INC.)	
)	
Defendants.)	

ORDER ON MOTION FOR EXTENSION OF TIME TO ANSWER
AND FOR STAY OF PROCEEDINGS

Defendants, RC2 Corporation and Learning Curve Brands, Inc., by counsel, having filed their Motion for Extension of Time to Answer and for Stay of Proceedings, and the Court, being duly advised in the premises, hereby GRANTS said Motion.

It is THEREFORE ORDERED, ADJUDGED and DECREED that Defendants in this matter have to and including thirty (30) days following the transfer of this case to the MDL or denial of RC2 Corporation and Learning Curve Brands, Inc.'s pending Motion for Transfer of Actions to the Northern District of Illinois for Coordinated Pre-Trial Proceedings Pursuant to 28

U.S.C. § 1407 ("Motion for Transfer") and this cause is stayed as to all Defendants pending transfer to the MDL or denial of the Motion for Transfer.

Dated: 08/27/2007



LARRY J. MCKINNEY, CHIEF JUDGE
United States District Court
Southern District of Indiana

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE. NO. 07-22271-CIV-GOLD/TURNOFF

BRENDA MAYA SINGER, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

LEARNING CURVE BRANDS, INC., and
LEARNING CURVE BRANDS, INC., d/b/a
RC2 BRANDS, INC.,

Defendants.

ORDER GRANTING STAY; *close my case* (RB)

THIS CAUSE comes before the Court on Defendants' Motion to Stay Proceedings [DE 6] filed on September 20, 2007. In this Motion, Defendants ask me to stay this case pending a decision by the Judicial Panel on Multidistrict Litigation (JPML) on the pending motions to transfer this action, along with other cases, to the MDL. Plaintiff has represented to the Court that she has no objection to such a stay [DE 8]. As such, this case shall be stayed and administratively closed pending a decision by the JPML. Accordingly, it is hereby

ORDERED AND ADJUDGED that

1. Defendants' Motion [DE 6] is GRANTED. This case is stayed.
2. This case is administratively CLOSED. Any party may move that this case be re-opened.

DONE AND ORDERED in Chambers in Miami, Florida this ²⁶ day of September, 2007.


THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc:
U.S. Magistrate Judge William C. Turnoff
All counsel of record.

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JAMES WELDON STRATTON and
CHRISTA MARIE STRATTON,
Individually and as Parents, Natural
Guardians and Next Friends of
E.J.S. and M.M.S., Minors, on behalf of
themselves and all others similarly situated

PLAINTIFFS

vs.

CASE NO. 4:07CV00640

RC2 CORPORATION, RACING
CHAMPIONS ERTL CORPORATION,
and LEARNING CURVE BRANDS, INC.,
formerly doing business as
THE ERTL COMPANY, INC., RACING
CHAMPIONS ERTL, INC., RC ERTL,
INC. and RC2 BRANDS, INC.

DEFENDANTS

ORDER

Pending is Defendant's motion to extend time to answer and for stay of proceedings. (Docket # 20). For good cause shown, the motion is GRANTED. All Defendants who have not yet responded to Plaintiffs' complaint shall have until the Judicial Panel on Multidistrict Litigation ("JPML") shall Order them to respond, or until thirty (30) days after the JPML declines to accept transfer of this case. This case shall be, and hereby is, stayed pending a ruling by the JPML on the motion to transfer the case. All defenses are preserved pending the stay, and plaintiffs may, in accordance with the Rules, amend their Complaint during the stay.

IT IS SO ORDERED this 11th day of September, 2007.

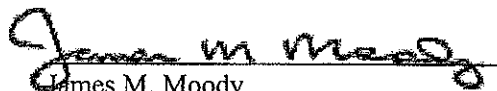

James M. Moody
United States District Judge

EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DEF
Clerk

C. KELLY, on behalf of herself and all Others
Similarly Situated,

Plaintiffs,

v.

Civil No. 07-CV-2525 (RB)

RC2 CORPORATION,

Defendant.

STIPULATION

IT IS HEREBY STIPULATED by and between the parties that the above-referenced action be stayed pending the ruling of the Judicial Panel on Multidistrict Litigation ("JPML") on RC2's Motion for Transfer of Actions to the Northern District of Illinois for Coordinated Pre-Trial Proceedings Pursuant to 28 U.S.C. § 1407.

BALESTRIERE PLLC
Attorneys for Plaintiff

HODGSON RUSS LLP
Attorneys for Defendant RC2 Corporation

By: [Signature]
John Balestriere (JB-3247)
Craig Stuart Lanza (CL-2452)
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(212) 374-5401

By: [Signature]
Lawrence R. Bailey (LRB-3267)
The Guaranty Building
140 Pearl Street Suite 100
Buffalo, New York 14202
(716) 856-4000

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NOT RECORDED:

s/Frederic Block, Sr. USDJ

U.S.D.J.

9/26/07

EXHIBIT F

**BEFORE THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

**IN RE RC2 CORP. TOY LEAD
PAINT PRODUCTS LIABILITY
LITIGATION**

MDL DOCKET NO.: 1893

NOTICE OF RELATED "TAG-ALONG" ACTIONS

Pursuant to Rule 7.2(i) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Defendants, RC2 Corporation and Learning Curve Brands, Inc., by their undersigned counsel, hereby submit this Notice of Related "Tag-Along" Actions and state that the following cases are potentially related to *In Re RC2 Corp. Toy Lead Paint Products Liability Litigation*, MDL Docket No. 1893, as "Tag-Along" Actions:


Brian Deutsch, individually and on behalf of all others similarly situated v. Learning Curve Brands, Inc. and Learning Curve Brands, Inc. d/b/a RC2 Corporation, Eastern District of Missouri (Eastern Division), Honorable Carol E. Jackson, Case No. 4:07-cv-01689-CEJ

Mitchell Hungerpiller and Patricia Hungerpiller, individually an on behalf of a class of similarly situated persons v. RC2 Corporation, a Delaware Corporation, and Learning Curve Brands, Inc., a Delaware Corporation, each separately and on behalf of all other entities similarly situated, Northern District of Alabama (Southern Division), Magistrate-Judge Harwell G. Davis, III, Case No. 2:07-cv-01805-HGD

Copies of the Complaint and Docket Sheet in each of these matters have been attached for the Court's convenience.

Respectfully submitted,

RC2 Corporation and Learning Curve Brands, Inc.


By one of their attorneys
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BEFORE THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

IN RE RC2 CORP. TOY LEAD
PAINT PRODUCTS LIABILITY
LITIGATION

MDL DOCKET NO.: 1893

CERTIFICATE OF SERVICE

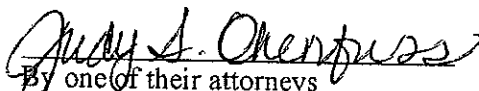
I hereby certify that, in addition to those parties indicated on the attached Attorney Panel Service List for this matter, a copy of the foregoing Notice of Related "Tag-Along" Actions was served by First Class Mail on October 18th 2007 to the following:

Lance A. Harke, P.A.
HARKE & CLASBY LLP
155 South Miami Ave, Suite 600
Miami, FL 33130

Counsel for Plaintiff: Brenda Maya Singer, S.D. Florida No. 07-cv-22271

Respectfully submitted,

RC2 Corporation and Learning Curve Brands, Inc.


By one of their attorneys
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